

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

DESMOND LAMONT LAKES,

Defendant and Appellant.

B217897

(Los Angeles County  
Super. Ct. No. MA045261)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Thomas R. White, Judge. Affirmed.

Jonathan B. Steiner and Ann Krausz, under appointments by the Court of Appeal,  
for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Desmond Lamont Lakes appeals from the judgment entered following a jury trial in which he was convicted of assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) and his admission that he served a prior prison term within the meaning of Penal Code section 667.5, subdivision (b). He was sentenced to prison for four years, consisting of the middle term of three years plus one year for the prior prison term enhancement.

The evidence at trial established that on March 8, 2009, Tiechaye Culver and appellant were living together in an apartment in Lancaster. On that date, they got into an argument. Culver asked appellant to leave, he put her in a headlock, and attempted to choke her. When Culver threatened to call the police, appellant left.

Appellant returned and demanded entrance to the apartment to gather some personal belongings. Once inside, appellant placed his hands around Culver's neck, making her unable to breathe. She struggled and, when she was able to pry appellant's hands from her neck, she told her sister to call 911. Appellant left the location, taking Culver's cell phone and the house phone. Culver's sister essentially gave the same account of the incident.

Deputies received another 911 call at approximately 3:00 a.m., wherein Culver's sister reported that appellant was trying to get into the apartment through a window. Deputies responded but were unable to locate appellant. Concerned that appellant would return and cause harm to Culver and her sister, deputies continued to patrol the area.

When Culver was contacted by Los Angeles County Deputy Sheriff Randy Megrdle to review the incident, Culver stated she wanted to forget the whole incident. She had reconciled her differences with appellant and did not want to cooperate with the investigation.

Culver testified that she argued with appellant and called the police several times. The police told her there was nothing they could do because appellant did not put his hands on her. For that reason, when the police came, she told them appellant put his hands on her. On March 8, appellant never hit her, choked her, or put her in a headlock.

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On December 8, 2009, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On December 18, 2009, he filed a request to appoint new appellate counsel based on his counsel's inability to find any arguable issues and for an extension of time to file a supplemental brief. On January 12, 2010, said request was denied.

Appellant also claimed the trial court dismissed his original public defender in an untimely fashion leaving him with an attorney who was unfamiliar with his case. As a result, his attorney had inadequate time to review the transcripts and failed to put on a defense. Appellant additionally faults his appellate attorney for not arguing that the victim and witness recanted their statements and for refusing to argue evidence supporting his claim of innocence.

We have examined the entire record and are satisfied that no arguable issues exist. "In reviewing a challenge to the sufficiency of evidence, the reviewing court must determine from the entire record whether a reasonable trier of fact could have found that the prosecution sustained its burden of proof beyond a reasonable doubt. In making this determination, the reviewing court must consider the evidence in a light most favorable to the judgment and presume the existence of every fact the trier could reasonably deduce from the evidence in support of the judgment. The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt. [Citations.]" (*People v. Mincey* (1992) 2 Cal.4th 408, 432, fn. omitted.) We do not reweigh the evidence or reevaluate the credibility of witnesses. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) Further, with regard to appellant's claim that he was assigned an attorney who was unfamiliar with his case and who had inadequate time to review the transcripts and prepare a defense, issues cognizable on appeal are confined to matters contained in the appellate record. Appellant has, by virtue of counsel's compliance with the *Wende* procedure and our review of the record, received adequate and effective

appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

**DISPOSITION**

The judgment is affirmed.

EPSTEIN, P.J.

We concur:

WILLHITE, J.

MANELLA, J.